

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOEL STEDMAN, *et al.*,

Plaintiffs,

v.

PROGRESSIVE DIRECT INSURANCE  
COMPANY,

Defendant.

Cause No. C18-1254RSL

ORDER GRANTING IN  
PART PLAINTIFFS'  
MOTION TO COMPEL

This matter comes before the Court on “Plaintiffs’ Motion to Compel Responses to Discovery and for Sanctions.” Dkt. # 86. Plaintiffs allege that Progressive’s reliance on an independent medical examiner’s finding that its insured had attained a fixed and stable condition or maximum medical improvement (“MMI”) as justification for denying the payment of personal-injury-protection (“PIP”) benefits violates Washington law. The Court certified a class of all insureds who had their PIP benefits terminated or limited “based, even in part, upon [Progressive’s] determination that its insured . . . had reached ‘maximum medical improvement’ or a ‘fixed and stable’ condition.” Dkt. # 74 at 11-12. The parties submitted supplemental briefing on the meaning of “based on,” an issue which had to be resolved so that class members could be identified. The Court rejected Progressive’s argument that a coverage decision was not “based on” MMI unless it were the sole justification for the termination of benefits, instead

1 finding that if Progressive identified the achievement of MMI (or a fixed and stable condition)  
2 as a reason for the denial of PIP benefits (*i.e.*, if Progressive incorporated that finding into its  
3 coverage determination as justification, in whole or in part), the coverage decision was “based  
4 on” that determination. Plaintiffs now seek to compel the production of correspondence with  
5 independent medical examiners and insureds<sup>1</sup> so that they can identify class members, send  
6 notice of this litigation to the class, and establish liability. Plaintiffs also request an award of  
7 fees under Fed. R. Civ. P. 37(a)(5)(A).  
8

9  
10 The motion is GRANTED in part.<sup>2</sup> For the most part, the information plaintiffs seek is  
11 not only relevant, but essential to their claims and the efficient resolution of this class action.  
12 The only way to identify class members and to establish that Progressive denied PIP benefits  
13 “based on” a finding of MMI is to review the claims in which an IME was conducted prior to a  
14 benefits denial/limitation and ascertain the insurer’s justification for the coverage determination.  
15 Plaintiffs are not asking Progressive to perform the textual review or make the critical  
16 determination: they simply want Progressive to produce correspondence from a discrete  
17 universe of files<sup>3</sup> so that they can perform the necessary textual analysis.  
18  
19  
20  
21  
22

---

23 <sup>1</sup> In particular, plaintiffs seek a list of all PIP claim files where the individual claimant underwent  
24 an IME and the production of all correspondence in those files that (a) was sent to the claimant and  
25 discusses the basis for terminating or limiting PIP benefits and/or (b) was sent to a medical provider and  
discusses the IME. Dkt. # 87-2.

26 <sup>2</sup> Having reviewed the memoranda, declarations, and exhibits submitted by the parties, the Court  
27 finds that the matter can be resolved without oral argument.

28 <sup>3</sup> Progressive has identified a total of 1,892 claims in which IMEs were scheduled or performed  
after July 24, 2012. Dkt. # 89 at 6.

1 Progressive argues that it will be too burdensome to “locate, extract, and produce the  
2 requested documents.”<sup>4</sup> Dkt. # 89 at 2. Progressive proposes, instead, that it be required to  
3 produce responsive documents from 100 randomly selected claims files, at which point the  
4 parties and the Court will be in a better position to evaluate the necessity of any remaining  
5 production. This procedure was used to bring the class certification issues before the Court,  
6 however, and the review of correspondence from a representative sample of claims files made  
7 clear the necessity of the requested production.  
8

10 Progressive also suggests that it be permitted to substitute “internal billing endnotes  
11 related to IMEs” in place of the categories of documents plaintiffs requested because of the  
12 “practical hurdles and extreme cost associated with Progressive conducting a manual claim-by-  
13 claim review to obtain and provide” the information plaintiffs seek. Dkt. # 89 at 6. The fact that  
14 Progressive cannot identify all responsive documents with a single automated search does not  
15 show – or even suggest – that the requested discovery is unduly burdensome or non-proportional  
16 to the needs of the case. The information plaintiffs seek is critical, and the manual review of  
17 files in which adverse coverage determinations were made after an IME (presumably something  
18 less than the 1,892 cases in which an IME was performed) is not unreasonable in the context of  
19  
20  
21  
22

---

23  
24 <sup>4</sup> Progressive also repeats its argument that a class should not have been certified where the  
25 identity of class members cannot be instantly ascertained. The Court decided this issue against  
26 Progressive at the certification stage: “Identification of the absent class members will require a  
27 determination of the meaning of “based on” as used in *Durant* and a review of the written notices setting  
28 forth Progressive’s bases for limiting PIP benefits. . . . [T]hese difficulties are not particularly complex  
and can be reasonably managed with some forethought and planning. The Court finds that the benefits  
of a single class action that resolves the common issues identified above outweighs the management  
challenges that will undoubtedly arise.” Dkt. # 74 at 11 (footnote omitted).

1 this litigation. While Progressive is free to search for and compile the requested documents in  
2 any way it deems appropriate, it cannot insist that plaintiffs alter their request to mirror  
3 computer codes that may or may not adequately capture the requested information.  
4


5 Progressive does, however, made a good point regarding the scope of the request for  
6 correspondence with medical providers. That request should be limited to correspondence  
7 regarding claims that were denied, terminated, or limited following the IME.<sup>5</sup>  
8

9  
10 For all of the foregoing reasons, Progressive is hereby ORDERED to supplement its  
11 production by (1) identifying each PIP claim made between July 24, 2012, and the present, on a  
12 policy issued by Progressive in Washington State, where the individual claimant underwent an  
13 IME and PIP benefits were subsequently denied, terminated, or limited; (2) producing all  
14 correspondence between Progressive and the claimant in each of those claims files; and  
15 (3) producing all correspondence between Progressive and the physician or medical provider  
16 who performed the IME in each of those claims files. Progressive may, if it chooses,  
17 individually review the correspondence and produce only those documents that touch on the  
18 justification for the coverage denial, termination, or limitation, but its production must be  
19 complete twenty-eight days after the date of this Order. Plaintiffs' request for an award of fees is  
20 denied.  
21  
22  
23  
24  
25

---

26 <sup>5</sup> The Court declines to decide the statute of limitations issue in the context of this motion. The  
27 Court has already issued an order finding that the class period began on July 24, 2012. Progressive did  
28 not seek reconsideration of that order, and plaintiffs have filed a motion to amend to expressly state a  
contract claim, which would be subject to a six-year limitations period.

1 Dated this 22nd day of March, 2022.

2  
3  
4   
5 Robert S. Lasnik  
6 United States District Judge  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28